

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVELLOUS GREENE,

Plaintiff,

No. CIV S-05-0828 MCE KJM P

vs.

C.S.P. HIGH DESERT, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$ 0.94 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be

1 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
2 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
6 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
7 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
8 U.S.C. § 1915A(b)(1),(2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16 A complaint, or portion thereof, should only be dismissed for failure to state a
17 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
18 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
19 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
20 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
21 complaint under this standard, the court must accept as true the allegations of the complaint in
22 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
23 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
24 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 Plaintiff alleges he slipped and hit his head because the supervisor of food
2 services allowed water to accumulate on the floor. In addition, the Prison Industry boots he was
3 wearing are “prone to cause slipping.” Complaint (Compl.) ¶ 7. Defendant Wagner, the
4 Appeals Coordinator for High Desert State Prison, refused to process plaintiff’s grievance in an
5 appropriate fashion. Compl. ¶¶10, 14. Thereafter plaintiff was transferred to a different yard in
6 retaliation for his grievance. Compl. ¶ 35.

7 Negligent conduct does not constitute a deprivation under the due process clause,
8 even if it causes injury. Daniels v. Williams, 474 U.S. 327, 331 (1986) (no violation of civil
9 rights when prisoner injured himself by slipping on pillow left on the floor); see Jackson v. State
10 of Arizona, 885 F.2d 639, 641 (9th Cir. 1989) (claim of slippery floors does not state a cause of
11 action under the civil rights act). Accordingly, plaintiff’s claims about the slippery floor and the
12 poorly made boots do not state a claim under section 1983.

13 Additionally, there is no constitutional right to a grievance procedure. Mann v.
14 Adams, 846 F.2d 589 (9th Cir. 1988). Accordingly, any claimed error in the handling of
15 plaintiff’s administrative grievances and appeals does not state a cognizable claim. Plaintiff
16 should not include claims based on the grievance process in any amended complaint.

17 A claim that prison officials retaliated against an inmate for an exercise of his
18 First Amendment rights may be cognizable in a civil rights action. The claim has five elements:
19 “(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3)
20 that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First
21 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.”
22 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). Plaintiff’s current complaint does
23 not meet these elements; indeed, he fails to identify those responsible for his transfer.

24 Plaintiff will be given an opportunity to amend his complaint. If he so chooses,
25 plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of
26 plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the

1 complaint must allege in specific terms how each named defendant is involved. There can be no
2 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
3 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.
4 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.
5 1978). Furthermore, vague and conclusory allegations of official participation in civil rights
6 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

7 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
8 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
9 amended complaint be complete in itself without reference to any prior pleading. This is
10 because, as a general rule, an amended complaint supersedes the original complaint. See Loux
11 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
12 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
13 original complaint, each claim and the involvement of each defendant must be sufficiently
14 alleged.

15 Finally, in McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996), the Ninth
16 Circuit Court of Appeal upheld the dismissal of a complaint it found to be “argumentative,
17 prolix, replete with redundancy, and largely irrelevant. It consists largely of immaterial
18 background information.” The court observed the Federal Rules require that a complaint consist
19 of “simple, concise, and direct” averments. Id. As a model of concise pleading, the court quoted
20 the standard form negligence complaint from the Appendix to the Federal Rules of Civil
21 Procedure:

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1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway, called Boylston Street, in Boston Massachusetts, defendant negligently drove a motor vehicle against plaintiff, who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken, and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of one thousand dollars.

Id.

Phrased another way, "Vigorous writing is concise." William Strunk, Jr. & E.B. White, *The Elements of Style*, § III, ¶ 13 <<http://www.bartleby.com/141>>.

Plaintiff's complaint displays some of the same problems as the pleading dismissed in McHenry: there is much "'narrative rambling[]'" yet a marked lack of "notice of what legal claims are asserted against which defendants." Id. at 1176. While plaintiff will be given an opportunity to file an amended complaint, such a complaint must be limited to the retaliation claim **and limited to ten pages**. Plaintiff may use the court's form for filing a civil rights action, which will be provided.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

Plaintiff is assessed an initial partial filing fee of \$ 0.94. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections filed concurrently herewith

3. Plaintiff's complaint is dismissed.

4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal

1 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must not
2 exceed ten pages, must bear the docket number assigned this case and must be labeled "Amended
3 Complaint"; failure to file an amended complaint in accordance with this order will result in a
4 recommendation that this action be dismissed.

5 5. The Clerk of the Court is directed to send plaintiff a copy of the civil rights
6 form for use by prisoner.

7 DATED: December 6, 2005.

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10 UNITED STATES MAGISTRATE JUDGE
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